IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	
PHILIP EMIABATA,	§	Bankruptcy Case No. 09-37104-13
Debtor	§	

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	§	
PHILIP EMIABATA,	§	**CIVIL ACTION NO. H-09-3547**
Appellant.	§	

MEMORANDUM AND ORDER

This bankruptcy appeal is before the Court on the "Motion for Reinstatement

of Appeal and to Vacate Order of the Court of December 23rd, 2009" ("Motion")

[Doc. # 9]. In the Memorandum and Order [Doc. # 7] entered December 23, 2009, the

Court noted that Appellant Philip Emiabata had not filed a response to the Motion to

Dismiss Appeal [Doc. # 4] filed by Bank of America ("BOA"). In the Motion,

Appellant states correctly that he filed a timely Response to BOA's Motion to

Dismiss, but it was improperly docketed by the Clerk's Office in only the bankruptcy

case. As a result, the Court did not review the Response prior to ruling on BOA's

motion.

The Court has now carefully reviewed Appellant's Motion [Doc. # 9] and

Response [Doc. # 8]. Based on this review, the Court concludes that the Response

does not affect the soundness of the Court's prior ruling in this appeal. As discussed

in the Memorandum and Order [Doc. # 7] entered December 23, 2009, BOA held a

claim secured by Appellant's 2007 Hummer H2 (the "Collateral"). BOA obtained

relief from the automatic stay in Appellant's Chapter 13 bankruptcy proceeding, then

foreclosed on and sold the Collateral at auction to a third party good faith purchaser

for value. As a result, under clear Fifth Circuit legal authority, the appeal was moot

because the Collateral had been sold. *See, e.g., Matter of Sullivan Cent. Plaza I, Ltd.*,

914 F.2d 731, 733 (5th Cir. 1990). Because this bankruptcy appeal was properly

dismissed as moot for the reasons discussed in the December 23, 2009 Memorandum

and Order, it is hereby

> **ORDERED** that Appellant's Motion [Doc. # 9] is **DENIED**.

> SIGNED at Houston, Texas, this 4th day of **January, 2010.**
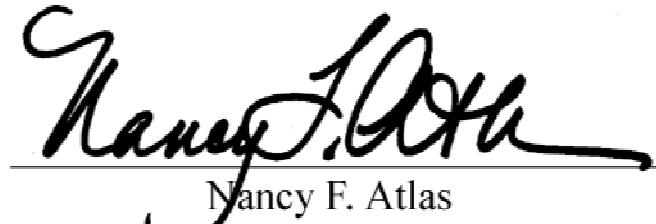
Nancy F. Atlas
United States District Judge